

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
SEDY CEDAR SALES,)
Appellant,)
vs.)
OLYMPIC AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 369

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$100.00 civil penalty for an alleged smoke emission violation; having come on regularly for informal hearing before the Pollution Control Hearings Board on the 4th day of October, 1973, at Lacey, Washington; and appellant Sedy Cedar Sales appearing through its mill manager, Doug Fricke and respondent Olympic Air Pollution Control Authority appearing through its attorney, Fred Gentry; and Board member present at the hearing being W. A. Gissberg; and the Board having considered the transcript, exhibits, records and files herein and having entered on the 11th day

1 of December, 1973, its proposed Findings of Fact, Conclusions of Law
2 and Order; and the Board having served said proposed Findings, Conclusions
3 and Order upon all parties herein by certified mail, return receipt
4 requested and twenty days having elapsed from said service; and

5 The Board having received no exceptions to said proposed
6 Findings, Conclusions and Order; and the Board being fully advised
7 in the premises; now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
9 Findings of Fact, Conclusions of Law and Order, dated the 11th day
10 of December, 1973, and incorporated by this reference herein and
11 attached hereto as Exhibit A, are adopted and hereby entered as the
12 Board's Final Findings of Fact, Conclusions of Law and Order herein.

13 DONE AT Lacey, Washington, this 7th day of January, 1974.

14 POLLUTION CONTROL HEARINGS BOARD

15 Walt Woodward
16 WALT WOODWARD, Chairman

17 W. A. Gissberg
18 W. A. GISSBERG, Member

19 Mary Ellen McCaffrey
20 MARY ELLEN MCCAFFREE, Member

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FINDINGS OF FACT,
CONCLUSIONS AND ORDER

An informal hearing on the appeal of Sedy Cedar Sales to a Notice of Civil Penalty of \$100.00 for an alleged smoke emission violation came on before W. A. Gissberg, Board member and presiding officer, on October 4, 1973 in Lacey, Washington.

Appellant appeared by and through Doug Fricke, an employee and mill manager of appellant; respondent appeared by and through its attorney, Fred Gentry.

Having reviewed the transcript of the testimony and the exhibits admitted into evidence and being fully advised, the Board makes the

EXHIBIT A

1 following

2 FINDINGS OF FACT

3 I.

4 Appellant operates a mill near Humptulips, Grays Harbor, Washington
5 and has done so since April 1, 1973. On that date appellant purchased
6 the mill facilities and the land upon which it is situated from U. S.
7 Shake Corporation. It is not clear from the testimony whether appellant
8 also purchased all of the stock of the U. S. Shake Corporation. At any
9 event, appellant was in control of and operated the mill subsequent to
10 April 1, 1973.

11 II.

12 U. S. Shake Corporation had been operating the mill under the
13 conditions of a Variance issued by respondent. The Variance was for a
14 period of time which expired on July 3, 1973. Appellant's owners were
15 of the belief that the Variance which had been granted to U. S. Shake
16 Corporation extended to and protected them in their operation of the
17 mill until such time as the Variance expired.

18 III.

19 Approximately one week before the smoke emission occurred which is
20 the subject matter of this appeal, an employee of respondent advised
21 appellant's mill manager that appellant would be required to obtain a
22 new Variance since the Variance which had been granted to U. S. Shake
23 Corporation was personal to that entity and was not transferable to
24 appellant. Until being so advised, appellant had been of the opinion
25 that it would have, under the terms of the Variance, until July 3, 1973
26 within which to present a written compliance plan to respondent agency.

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

IV.

On April 10, 1973 appellant caused or allowed smoke to be emitted from its wig-wam burner at its mill for 90 consecutive minutes of a shade darker than No. 2 on the Ringelmann Chart, namely, a Ringelmann No. 3.

V.

Section 10.01 of respondent's Regulation I governs the emissions from waste-wood burners and makes it unlawful to cause or allow the emission to the outdoor atmosphere for more than 15 minutes in any consecutive 8 hours of a gas stream containing air contaminants which is darker in shade than that designated as No. 2 on the Ringelmann Smoke Chart.

VI.

On April 11, 1973 appellant had submitted a proposed compliance schedule to respondent which was accepted by the agency in June, 1973. The effect of a compliance schedule is to excuse what otherwise would be a violation of respondent's smoke emission regulations.

From which comes these

CONCLUSIONS OF LAW

I.

Appellant was in violation of Section 10.01 of respondent's Regulation I.

II.

The Variance issued to appellant's predecessor in interest of the mill facility was personal to U. S. Shake Corporation and did not extend to nor inure to the benefit of appellant.

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 III.

2 Since appellant in good faith believed that the Variance covering
3 its facility was applicable to it and since appellant submitted a
4 proposed compliance schedule to the agency immediately after learning
5 from it that the Variance did not protect it, the Board deems the
6 penalty of \$100.00 to be excessive.

7 From which follows the Board's

8 ORDER

9 The appeal is denied, but the civil penalty is suspended upon the
10 condition that appellant not violate respondent's Regulation I for six
11 months from the date of this Order.

12 DONE at Lacey, Washington this 11th day of December, 1973.

13 POLLUTION CONTROL HEARINGS BOARD

14 Walt Woodward
15 WALT WOODWARD, Chairman

16 W. A. Gissberg
17 W. A. GISSBERG, Member

18 Mary Ellen McCaffree
19 MARY ELLEN McCAFFREE, Member

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27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER